

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GETTY IMAGES (US), INC.

Plaintiff,

-against-

ADVERNET, INC.
f/k/a VR MARKETING, INC.,

09-cv-1895(DAB)

Defendants.
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AFFIRMATION
IN SUPPORT

I, OSCAR MICHELEN, an attorney admitted to practice before this court affirm under penalties of perjury that the following is true upon information and belief based upon the files maintained in my office:

1. I am the attorney for the defendant Advernet, Inc. in the above entitled action and respectfully move this Court to issue an order pursuant to Rules 12(b)(1) and (6), FRCP, granting dismissal of plaintiffs' complaint and for such other and further relief as the court deems just and proper.
2. The legal basis for the relief requested is fully set forth in the accompanying memorandum of law. A copy of the plaintiff's complaint is attached as an exhibit.
3. There are no facts in issue as the basis for the relief sought is contained in the language of plaintiff's complaint.
4. While the complaint, at paragraph 17, recites that plaintiff is the "exclusive licensee" of the image, the complaint fails to allege that the license given by the photographers to plaintiff includes an exclusive right to enforce the copyright in the image and to bring action to do so.

5. The complaint fails to provide a copy of the license agreement, so that defendant cannot properly evaluate whether plaintiff is the proper party to this litigation.
 6. Paragraph 6 of the complaint alleges that the photographers retain ownership rights in the images. This retention of ownership rights contradicts the "exclusive license" alleged in paragraph 17 and may affect the licensee's ability to bring this action.
 7. Accordingly, on the face of the complaint, the plaintiff lacks standing to bring this action and the complaint fails to state a cause of action for which relief can be granted.
- WHEREFORE**, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

Dated: April 23, 2009

Signature: Oscar Michelen
OSCAR MICHELEN (OM 5199)